IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S. B. CIVIL WRIT PETITION NO.985/2007

Ram Singh
Vs.
State and anr.

Date of order: 27/08/2007

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Mr. Akbar Khan, for the petitioner.
Mr. B.K. Sharma, Deputy GA for State.

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BY THE COURT:-

The petitioner has challenged the order dated 14/11/2006 by which Divisional Commissioner, Jaipur Division, Jaipur has declared the petitioner disqualified to continue in the office of Gram Panchayat, Tigava, Panchayat Samiti Kotkasim on the ground that fourth child was born to him after 27/11/1995. According to the provisions contend in Section 19(l) read with Section 39 of the Rajasthan Panchayati Raj Act, 1994 (for short, "Act of 1994") petitioner was disqualified to contest the election yet he contensted the election which was held in January 2004 even though he was not eligible to contest the same.

2) Shri B.K. Sharma, learned Deputy Government Advocate opposed the writ petition on the ground that since fourth child was born to the petitioner after the cut-off-date, the petitioner was not eligible, though contested the election in view of the provisions contained in Section 99. A notice was given to him and thereafter enquiry was conducted. The petitioner was provided all documents and it was thereafter that the Divisional Commissioner concluded that petitioner was disqualified to continue in the office of Gram Panchayat Tigava, Kotkasim.

3) Controversy raised in this case is squarely covered by the decision of Larger Bench in the case of **Smt.Sameera Bano Vs. State of Raj. & Ors, D.B. Special Appeal (W) No.236/06, decided on 2/4/2007** wherein it was held as under:-

> “that a pre-election disqualification can be adjudicated only in an election petition before the District Judge under Section 43 of the Act read with rule 80 of the Election Rules and cannot be adjudicated by the authority under rule 23 of the Rules.”

Following the view taken by the larger bench in Smt.Sameera Bano, supra, the writ petition

deserves to be allowed and is accordingly allowed. The impugned-order dated 14/11/2006 is set-aside. Petitioner is declared entitled to continue in the office of Gram Panchayat, Tigava, Panchayat, Samiti, Kotkasim.

(MOHAMMAD RAFIQ), J.

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